

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at CHATTANOOGA

FRANK MULTARI, SR.,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 1:05-cv-359
)	
CLEVELAND COMMUNITY HOSPITAL,)	Judge Mattice
COMMUNITY HEALTH SYSTEMS, INC.,)	
and CLEVELAND HOSPITAL SECURITY)	
FIRM,)	
)	
<i>Defendants.</i>)	

MEMORANDUM

Before the Court are Plaintiff's amended motion for entry of default [Court Doc. No. 21]; Plaintiff's motion to hold Cleveland Community Hospital in contempt of court and responsible for a default judgment against Security Engineers, Inc. ("SEI") [Court Doc. No. 35]; Plaintiff's motion to hold Cleveland Community Hospital and Community Health Systems liable for a default judgment against SEI [Court Doc. No. 33]; and Plaintiff's motion for default judgment against Cleveland Community Hospital, Community Health Systems, and Cleveland Hospital Security Firm [Court Doc. No. 40]. The Court will address each motion in turn.

I. Amended Motion for Entry of Default [Court Doc. No. 21]

Federal Rule of Civil Procedure 55(a) provides that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default." In this case, Plaintiff has requested the Clerk to enter the default of SEI. Defendants Cleveland Community Hospital and Community Health Systems

and non-party SEI oppose the entry of default, asserting that Security Engineers, Inc. has not properly been named in the complaint or served process.

Defendants are correct that SEI is not a party to this lawsuit, as Plaintiff has not named SEI as a defendant in his complaint (Court Doc. No. 3, Compl.), nor has he sought to amend his complaint to add SEI as a defendant. An entry of default may not be made against an entity that is not named as a party to the lawsuit.

Accordingly, because SEI is not a party to this action, Plaintiff's amended motion for entry of default will be **DENIED**.

II. Motion to Hold Cleveland Community Hospital in Contempt of Court and Responsible for Default Judgment Against SEI [Court Doc. No. 35]

Plaintiff moves the Court to hold Cleveland Community Hospital in contempt of court because the hospital failed to deliver to SEI the summons issued in the name of Cleveland Hospital Security Firm.

The Court will not hold Defendant Cleveland Community Hospital in contempt of court for failing to deliver to SEI a summons issued in the name of "Cleveland Community Hospital Security Co. (et al.) in House." It is Plaintiff's responsibility to obtain proper service of the complaint on all defendants, and Cleveland Community Hospital will not be held responsible for Plaintiff's failure to do so.

Plaintiff also moves the Court to hold Cleveland Community Hospital responsible for any default judgment entered against SEI because the hospital accepted service on SEI's behalf. First, because no default judgment will be entered against non-party SEI, Defendant Cleveland Community Hospital cannot be held liable. Second, the Court notes that Cleveland Community Hospital did not, in fact, accept service on behalf of SEI because

a summons has not been issued in the name of SEI and there is no indication that Plaintiff followed Federal Rule of Civil Procedure 4(h) in attempting to serve SEI.

Accordingly, Plaintiff's motion to hold Cleveland Community Hospital in contempt of court and responsible for any default judgment against SEI will be **DENIED**.

III. Motion to Hold Cleveland Community Hospital and Community Health Systems Liable for Default Judgment Against SEI [Court Doc. No. 33]

Plaintiff moves the Court to hold Cleveland Community Hospital and Community Health Systems liable for a default judgment against SEI. First, as stated above, because no default judgment will be entered against non-party SEI, Defendants Cleveland Community Hospital and Community Health Systems cannot be held liable. Second, as stated above, it is not proper to hold Defendants Cleveland Community Hospital and Community Health Systems liable for any default judgment entered against SEI merely because they failed to deliver to SEI a summons issued in the name of "Cleveland Community Hospital Security Co. (et al.) in House." It is Plaintiff's duty to obtain proper service of the complaint on all defendants, and Cleveland Community Hospital and Community Health Systems will not be held responsible for Plaintiff's failure to do so.

Accordingly, Plaintiff's motion to hold Cleveland Community Hospital and Community Health Systems liable for a default judgment against SEI will be **DENIED**.

IV. Motion for Default Judgment Against Cleveland Community Hospital, Community Health Systems, and Cleveland Hospital Security Firm [Court Doc. No. 40]

Plaintiff moves the Court to enter a default judgment as to all Defendants because of certain statements that were made by Defendants' counsel. First, the Court notes that these are not proper grounds on which to request a default judgment against the

Defendants. Second, the Court notes that a judgment by default under Federal Rule of Civil Procedure 55(b) may only be granted after a default has been entered under Federal Rule of Civil Procedure 55(a). Plaintiff has not sought an entry of default against Cleveland Community Hospital or Community Health Systems. Third, under Rule 55(a), entry of default may be sought only when a party “has failed to plead or otherwise defend” In this instance, both Cleveland Community Hospital and Community Health Systems have answered the complaint and have continued to defend themselves against Plaintiff’s claims. Accordingly, Plaintiff’s motion for default judgment against Cleveland Community Hospital and Community Health Systems will be **DENIED**. The Court will **RESERVE** ruling on Plaintiff’s motion for default judgment against Cleveland Hospital Security Firm until such time as the Court rules on Plaintiff’s request for entry of default of Cleveland Hospital Security Firm.

VI. CONCLUSION

The Court will **RESERVE** ruling on Plaintiff’s request for default judgment as to Cleveland Security Hospital Firm. The Court will **DENY** the following motions by Plaintiff: amended motion for entry of default; motion to hold Cleveland Community Hospital in contempt of court and responsible for default judgment against SEI; motion to hold Cleveland Community Hospital and Community Health Systems liable for default judgment against SEI; and motion for default judgment against Cleveland Community Hospital and Community Health Systems.

A separate order will enter.

s/ Harry S. Mattice, Jr.
HARRY S. MATTICE, JR.
UNITED STATES DISTRICT JUDGE